

32-05

3/2/05

Attorney Docket No. HTEC-008/04US

PATENT

Express Mail Label No.:

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Date of Deposit:

February 28, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of James R. MAULT

Serial No.: 10/712,760

Examiner: Not Yet Assigned

Confirmation No.: 7394

Art Unit: 3736

Filed: November 12, 2003

For: **METABOLIC CALORIMETER EMPLOYING RESPIRATORY GAS ANALYSIS**

Mail Stop AMENDMENT

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

**INFORMATION DISCLOSURE STATEMENT
UNDER 37 C.F.R. §1.97(b)**

In accordance with the duty of disclosure set forth in 37 C.F.R. §1.56, Applicant(s) hereby submits the following information in conformance with 37 C.F.R. §§1.97 and 1.98.

- ☐ Pursuant to 37 C.F.R. §1.98, a copy of each document cited in the attached Form PTO/SB/08 is enclosed.
- ☒ No copies of the publications listed on the attached Form PTO/SB/08A are being provided pursuant to 37 C.F.R. §1.98(d) because the publications were previously cited by or submitted to the Office in prior Application Serial No. 10/128,105 to which the above-identified application claims priority under 35 U.S.C. §120.
- ☒ No copies of any U.S. patents or U.S. patent application publications listed on the attached Form PTO/SB/08A are being provided pursuant to 37 C.F.R. §1.98 because this application was filed after June 30, 2003.
- ☐ Publication(s) ___ listed on the attached Form PTO/SB/08A were cited in a foreign search or examination report corresponding to ___ application serial no. ___ and mailed on ___.

- ☐ Enclosed is a copy of a non-English publication(s) _____. Pursuant to §609 of the M.P.E.P., Applicant submits the attached foreign search or examination report, which cites such non-English language publication(s).
- ☐ Enclosed is a copy of a non-English publication(s) _____. English language publication _____ (copy enclosed) claims priority from this non-English publication.
- ☐ Enclosed is an explanation of non-English publication(s) _____ for which an English translation is not available.
- ☐ Enclosed is an English translation of non-English publication(s) _____ cited in the attached Form PTO/SB/08A.
- ☐ Enclosed is a copy of pending patent Application Serial No. _____.

This Information Disclosure Statement is filed within any one of the following time periods:

- ☐ within three months from the filing date of this national application other than a CPA under 37 C.F.R. § 1.53(d);
- ☐ within three months from the date of entry of the national stage as set forth in 37 C.F.R. §1.491 in this international application;
- ☒ before the mailing date of a first office action on the merits; or
- ☐ before the mailing of a first office action after the filing of a request for continued examination under 37 C.F.R. § 1.114.


It is respectfully requested that the Examiner consider the above-noted information and return an initialed copy of the attached Form PTO/SB/08A to the undersigned.

Dated: February 28, 2005

Cooley Godward LLP
ATTN: Patent Group
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Tel: (650) 843-5000
Fax: (650) 857-0663

Respectfully submitted,
COOLEY GODWARD LLP

By: _____


Cliff Z. Liu
Reg. No. 50,834

Attorney Docket No. HTEC-008/04US

PATENT

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INFORMATION DISCLOSURE STATEMENT TRANSMITTAL

Enclosed are the following documents:

1. Information Disclosure Statement Under 37 C.F.R. 1.97(b) (2 pages);
2. Form PTO/SB/08A (4 pages); and
3. A return receipt postcard.

☒ In accordance with 37 C.F.R. §1.97(b), no additional fee for submission of the IDS is required.

☐ In accordance with 37 C.F.R. §1.97(c), also enclosed is:

☐ the fee of \$180.00 as set forth in 37 C.F.R. §1.17(p); or

☐ a statement as specified in 37 C.F.R. §1.97(e).

☐ In accordance with 37 C.F.R. §1.97(d), a statement as specified in 37 C.F.R. § 1.97(e) and the fee of \$180.00 as set forth in 37 C.F.R. §1.17(p) are also enclosed.

☐ Check No. _____ in the amount of \$____.00 for the total fee is attached.

☐ Please charge \$___ to Deposit Account No. (PA) 03-3117 for the total fee.
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The Commissioner is hereby authorized to charge any appropriate fees under 37 C.F.R. §§1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. (PA) 03-3117.

Dated: February 28, 2005

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By:



Cliff Z. Liu
Reg. No. 50,834

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+

PTO/SB/08A (08-00)



Substitute for form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(use as many sheets as necessary)

Sheet 1 of 4

Complete if Known

| | |
|------------------------|-------------------|
| Application Number | 10/712,760 |
| Filing Date | November 12, 2003 |
| First Named Inventor | James R. Mault |
| Group Art Unit | 3736 |
| Examiner Name | Not Yet Assigned |
| Attorney Docket Number | HTEC-008/04US |

PTO/SB/08A (08-00)

U.S. PATENT DOCUMENTS

| Examiner Initials* | Cite No. ¹ | U.S. Patent Document | | Name of Patentee or Applicant of Cited Document | Date of Publication of Cited Document MM-DD-YYYY |
|-----------------------|--------------------------|----------------------|--------------------------------------|---|---|
| | | Number | Kind Code ² (if known) | | |
| | P 1 | 2,630,798 | | White <i>et al.</i> | 03-10-1953 |
| | P 2 | 2,826,912 | | Kritz | 03-18-1958 |
| | P 3 | 2,831,348 | | Kritz | 04-22-1958 |
| | P 4 | 2,838,399 | | Vogel, Jr. | 06-10-1958 |
| | P 5 | 2,869,357 | | Kritz | 01-20-1959 |
| | P 6 | 2,911,825 | | Kritz | 11-10-1959 |
| | P 7 | 2,920,012 | | Sanders <i>et al.</i> | 01-05-1960 |
| | P 8 | 3,212,684 | | Svensson <i>et al.</i> | 10-19-1965 |
| | P 9 | 3,220,255 | | Scranton <i>et al.</i> | 11-30-1965 |
| | P 10 | 3,250,270 | | Bloom | 05-10-1966 |
| | P 11 | 3,306,283 | | Arp | 02-28-1967 |
| | P 12 | 3,523,529 | | Kissen | 08-11-1970 |
| | P 13 | 3,527,205 | | Jones | 09-08-1970 |
| | P 14 | 3,681,197 | | Smith | 08-01-1972 |
| | P 15 | 3,725,658 | | Stanley, <i>et al.</i> | 04-03-2004 |
| | P 16 | 3,726,270 | | Griffis <i>et al.</i> | 08-10-1973 |
| | P 17 | 3,738,169 | | Courty | 06-12-1973 |
| | P 18 | 3,799,149 | | Rummel <i>et al.</i> | 03-26-1974 |
| | P 19 | 3,814,091 | | Henkin | 06-04-1974 |
| | P 20 | 3,834,375 | | Sanctuary <i>et al.</i> | 09/10-1974 |
| | P 21 | 3,895,630 | | Bachman | 07-22-1975 |
| | P 22 | 3,938,551 | | Henkin | 02-17-1976 |
| | P 23 | 3,962,917 | | Terada | 06-15-1976 |
| | P 24 | 3,979,480 | | Radici <i>et al.</i> | 09-07-1976 |
| | P 25 | 4,003,396 | | Fleischmann | 01/18-1977 |
| | P 26 | 4,051,847 | | Henkin | 10-04-1977 |
| | P 27 | 4,078,554 | | Le Maitre <i>et al.</i> | 03-14-1978 |
| | P 28 | 4,186,735 | | Henneman <i>et al.</i> | 02-05-1980 |
| | P 29 | 4,188,946 | | Watson <i>et al.</i> | 02-19-1980 |
| | P 30 | 4,197,857 | | Osborn | 04-15-1980 |
| | P 31 | 4,200,094 | | Gedeon <i>et al.</i> | 04-29-1980 |
| | P 32 | 4,211,239 | | Raemer <i>et al.</i> | 07-08-1980 |
| | P 33 | 4,221,224 | | Clark | 09-09-1980 |
| | P 34 | 4,230,108 | | Young | 10-28-1980 |
| | P 35 | 4,341,867 | | Johansen | 07-27-1982 |
| | P 36 | 4,359,057 | | Manzella | 11-16-1982 |
| | P 37 | 4,368,740 | | Binder | 01-18-1983 |
| | P 38 | 4,386,604 | | Hershey | 06-07-1983 |
| | P 39 | 4,425,805 | | Ogura, <i>et al.</i> | 01-17-1984 |
| | P 40 | 4,440,177 | | Anderson <i>et al.</i> | 04-03-1984 |

¹ Unique citation designation number.

² See attached Kinds of U.S. Patent Documents.

| | | | | | |
|--|---|----|---|--------------------------|-------------------|
| Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) | | | | <i>Complete if Known</i> | |
| | | | | Application Number | 10/712,760 |
| | | | | Filing Date | November 12, 2003 |
| | | | | First Named Inventor | James R. Mault |
| | | | | Group Art Unit | 3736 |
| | | | | Examiner Name | Not Yet Assigned |
| Sheet | 2 | of | 4 | Attorney Docket Number | HTEC-008/04US |

| | | | | | |
|--|------|-----------|--|--------------------------|------------|
| | P 41 | 4,444,201 | | Itoh | 04-24-1984 |
| | P 42 | 4,463,764 | | Anderson <i>et al.</i> | 08-07-1984 |
| | P 43 | 4,572,208 | | Cutler <i>et al.</i> | 02-25-1986 |
| | P 44 | 4,598,700 | | Tamm | 07-08-1986 |
| | P 45 | 4,608,995 | | Linnarsson <i>et al.</i> | 09-02-1986 |
| | P 46 | 4,619,269 | | Cutler <i>et al.</i> | 10-28-1986 |
| | P 47 | 4,648,396 | | Raemer | 03-10-1987 |
| | P 48 | 4,658,832 | | Brugnoli | 04-21-1987 |
| | P 49 | 4,753,245 | | Gedeon | 06-28-1988 |
| | P 50 | 4,756,670 | | Arai | 07-12-1988 |
| | P 51 | 4,781,184 | | Fife | 11-01-1988 |
| | P 52 | 4,796,639 | | Snow <i>et al.</i> | 01-10-1987 |
| | P 53 | 4,850,371 | | Broadhurst <i>et al.</i> | 07-25-1989 |
| | P 54 | 4,856,531 | | Merilainen | 08-15-1989 |
| | P 55 | 4,909,259 | | Tehrani | 03-20-1990 |
| | P 56 | 4,914,959 | | Mylvaganam <i>et al.</i> | 04-10-1990 |
| | P 57 | 4,917,108 | | Mault | 04-17-1990 |
| | P 58 | 4,955,946 | | Mount <i>et al.</i> | 09-11-1990 |
| | P 59 | 4,986,268 | | Tehrani | 01-22-1991 |
| | P 60 | 4,998,018 | | Kurahashi <i>et al.</i> | 03-05-1991 |
| | P 61 | 5,022,406 | | Tomlinson | 06-11-1991 |
| | P 62 | 5,038,773 | | Norlien <i>et al.</i> | 08-13-1991 |
| | P 63 | 5,038,792 | | Mault | 08-13-1991 |
| | P 64 | 5,040,541 | | Poppendiek | 08-20-1991 |
| | P 65 | 5,042,500 | | Norlien <i>et al.</i> | 08/27/1991 |
| | P 66 | 5,042,501 | | Kenny <i>et al.</i> | 08/27/1991 |
| | P 67 | 5,060,506 | | Douglas | 10-29-1991 |
| | P 68 | 5,060,655 | | Rudolph | 10-29-1991 |
| | P 69 | 5,060,656 | | Howard | 10-29-1991 |
| | P 70 | 5,069,220 | | Casaprie <i>et al.</i> | 12-03-1991 |
| | P 71 | 5,072,737 | | Goulding | 12-17-1991 |
| | P 72 | 5,081,871 | | Glaser | 01-21-1992 |
| | P 73 | 5,095,900 | | Fertig <i>et al.</i> | 03-17-1992 |
| | P 74 | 5,095,913 | | Yelderman <i>et al.</i> | 03-17-1992 |
| | P 75 | 5,117,674 | | Howard | 06-02-1992 |
| | P 76 | 5,119,825 | | Huhn | 06-09-1992 |
| | P 77 | 5,178,155 | | Mault | 01-12-1993 |
| | P 78 | 5,179,958 | | Mault | 01-19-1993 |
| | P 79 | 5,214,966 | | Delsing | 06-01-1993 |
| | P 80 | 5,233,996 | | Coleman <i>et al.</i> | 08-10-1993 |
| | P 81 | 5,282,473 | | Braig <i>et al.</i> | 02-01-1994 |
| | P 82 | 5,285,794 | | Lynch | 02-15-1994 |
| | P 83 | 5,293,875 | | Stone | 03-15-1994 |
| | P 84 | 5,299,579 | | Gedeon <i>et al.</i> | 04-05-1994 |
| | P 85 | 5,303,712 | | Van Duren | 04-19-1994 |
| | P 86 | 5,309,921 | | Kisner <i>et al.</i> | 05-10-1994 |
| | P 87 | 5,326,973 | | Eckerbom <i>et al.</i> | 07-05-1994 |
| | P 88 | 5,355,879 | | Brain | 10-18-1994 |
| | P 89 | 5,357,972 | | Norlien | 10-25-1994 |
| | P 90 | 5,363,857 | | Howard | 11-15-1994 |
| | P 91 | 5,398,695 | | Anderson <i>et al.</i> | 03-21-1995 |
| | P 92 | 5,402,796 | | Packer <i>et al.</i> | 04-04-1995 |
| | P 93 | 5,419,326 | | Harmoncourt | 05-30-1995 |
| | P 94 | 5,425,374 | | Ueda <i>et al.</i> | 06-20-1995 |
| | P 95 | 5,450,193 | | Carlsen <i>et al.</i> | 09-12-1995 |

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| Substitute for form 1449A/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (use as many sheets as necessary) | | | | <i>Complete if Known</i> | |
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| | | | | Filing Date | November 12, 2003 |
| | | | | First Named Inventor | James R. Mault |
| | | | | Group Art Unit | 3736 |
| | | | | Examiner Name | Not Yet Assigned |
| Sheet | 2 | of | 4 | Attorney Docket Number | HTEC-008/04US |

| | | | | | |
|--|-------|-----------|----|----------------------------|------------|
| | P 96 | 5,468,961 | | Gradon <i>et al.</i> | 11-21-1995 |
| | P 97 | 5,503,151 | | Harmoncourt <i>et al.</i> | 04-02-1996 |
| | P 98 | 5,517,313 | | Colvin | 05-14-1996 |
| | P 99 | 5,570,697 | | Walker <i>et al.</i> | 11-05-1996 |
| | P 100 | 5,632,281 | | Rayburn | 05-27-1997 |
| | P 101 | 5,632,958 | | Kane, <i>et al.</i> | 05-27-1997 |
| | P 102 | 5,645,071 | | Harmoncourt, <i>et al.</i> | 07-08-1997 |
| | P 103 | 5,647,370 | | Harmoncourt | 07-15-1997 |
| | P 104 | 5,676,132 | | Tilotson <i>et al.</i> | 10-14-1997 |
| | P 105 | 5,705,735 | | Acorn | 01-06-1998 |
| | P 106 | 5,754,288 | | Yamamoto <i>et al.</i> | 05-19-1998 |
| | P 107 | 5,789,660 | | Kofoed <i>et al.</i> | 08-04-1998 |
| | P 108 | 5,796,009 | | Delsing | 08-18-1998 |
| | P 109 | 5,800,360 | | Kisner <i>et al.</i> | 09-01-1998 |
| | P 110 | 5,816,246 | | Mirza | 10-06-1998 |
| | P 111 | 5,831,175 | | Fletcher-Haynes | 11-03-1998 |
| | P 112 | 5,834,626 | | De Castro <i>et al.</i> | 11-10-1998 |
| | P 113 | 5,836,300 | | Mault | 11-17-1998 |
| | P 114 | 5,922,610 | | Alving <i>et al.</i> | 07-13-1999 |
| | P 115 | 5,932,812 | | Delsing | 08-03-1999 |
| | P 116 | 5,957,858 | | Micheels <i>et al.</i> | 09-28-1999 |
| | P 117 | 6,010,459 | | Silkoff <i>et al.</i> | 01-04-2000 |
| | P 118 | 6,044,843 | | O'Neill <i>et al.</i> | 04-04-2000 |
| | P 119 | 6,162,180 | | Miesel <i>et al.</i> | 12-19-2000 |
| | P 120 | 6,174,289 | | Binder | 01-16-2001 |
| | P 121 | 6,302,851 | | Gedeon | 10-16-2001 |
| | P 122 | 6,402,698 | B1 | Mault | 06-11-2002 |
| | P 123 | 6,645,158 | | Mault | 11-11-2003 |

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| Examiner Signature | | Date Considered | |
|--------------------|--|-----------------|--|

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

| FOREIGN PATENT DOCUMENTS | | | | | | |
|--------------------------|-----------------------|-------------------------|-----------------------------------|------------------------|---|--|
| Examiner Initials* | Cite No. ¹ | Foreign Patent Document | | | Name of Patentee or Applicant of Cited Document | Date of Publication of Cited Document MM-DD-YYYY |
| | | Office ¹ | Number ² (if known) | Kind Code ³ | | |
| | F 1 | EP | 0 459 647 A2 | | | 00-00-1991 |
| | F 2 | DE | 198 10 476 | | | 09-00-1998 |
| | F 3 | GB | 2,323,292 | | | 09-00-1998 |
| | F 4 | WO | WO 96/40340 | | | 12-00-1996 |
| | F 5 | WO | 0 712 638 A1 | | | 12-00-1995 |

| | | | |
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|--------------------|--|-----------------|--|

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¹ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3).

² For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document.

³ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST. 16 if possible.

⁴ Applicant is to place a check mark here if English language Translation is attached.

Please type a plus sign (+) inside this box →



PTO/SB/08A (08-00)

| | | | | | |
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| Examiner Name | Not Yet Assigned | | | | |
| Sheet | 4 | of | 4 | Attorney Docket Number | HTEC-008/04US |

| OTHER – NON PATENT LITERATURE DOCUMENTS | | | | |
|---|-----------------------|---|--|----------------|
| Examiner Initials* | Cite No. ¹ | Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published. | | T ² |
| | D 1 | MEDICAL PROGRESS THROUGH TECHNOLOGY, vol. 9, no. 1, 1982, BERLIN (D), pages 27-32, R. Salminen <i>et al.</i> , "Computerized Breath-by-Breath Analysis of Respiratory Variables During Exercise." | | |
| | D 2 | BRITISH JOURNAL OF ANAESTHESIA, vol. 49, 1977 LONDON (GB) pages 575-587, J.A. Bushman <i>et al.</i> "Closed Circuit Anaesthesia." | | |
| | D 3 | IEEE TRANSACTIONS ON BIOMEDICAL ENGINEERING, vol. 35, No. 9, September, 1988, pages 653-659, Capek <i>et al.</i> , "Noninvasive Measurement of Cardiac Output Using Partial CO ₂ ReBreathing." | | |
| | D 4 | CLINICS IN CHEST MEDICINE (Review), vol. 10, 1989, pages 255-264, Heigenhauser <i>et al.</i> , "Measurement of Cardiac Output by Carbon Dioxide Rebreathing Methods." | | |
| | D 5 | Determination of Nitric Oxide Levels by Fluorescence Spectroscopy, Gabor G. and Allon N. in BIOCHEMICAL PHARMACOLOGICAL AND CLINICAL ASPECTS OF NITRIC OXIDE, edited by B.A. Weissman <i>et al.</i> , Plenum Press, New York, 1995, page 57. | | |

| | | | |
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¹ Unique citation designation number.

² Applicant is to place a check mark here if English language Translation attached.